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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/740,965 12/21/00 DAVIES

J PT-1673004

023607 PM82/0919
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EXAMINER

COHEN, C

ART UNIT	PAPER NUMBER
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3634

DATE MAILED:

09/19/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/740,965

Applicant(s)
Davies et al

Examiner
Curtis Cohen

Art Unit
3634



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 21, 2000
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other:

Art Unit: 3634

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,209,610. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the instant application are broader in scope and therefore "read on" the claim of the patent.

Claim Objections

Claims 10-12 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim 7. See MPEP § 608.01(n). Accordingly, the claims 10-12 have not been further treated on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3634

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicants regard as their invention.

Claims 1-9, 14, 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the opposite frame portion" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim 2, recites the limitation "the screen assembly" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 2, recites the limitation "its operable position" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 2, recites the limitations "the jamb sill or header" in line 2. There is insufficient antecedent basis for these limitations in the claim.

Claim 2, recites the limitation "the window" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 3, recites the limitation "the opposite frame" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Claim 3, recites the limitation "its operable position" in line 12. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3634

Claim 4, recites the limitation "the installer" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 4, line 5, it is not clear to what applicants are referring when reciting "course upon course."

Claims 4-8, 14, and 15 applicants' use the term "preferably" throughout the claim which is indefinite because it is not if applicants are setting forth the structure that follows.

Claim 5, applicant recites the PVC preferably generally T-shaped key has a head extending from a leg in the shape of a preferred T, or alternatively a Y, or any other convenient shape. First, stating that the generally T-shaped head is in the shape of a T is redundant. Secondly, how can a "generally T-shaped key" be Y-shaped? And lastly, what other "convenient" shape are applicants setting forth. It is indefinite which embodiment the claims are setting forth.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors too many to list. Applicant must review all of the claims in accordance with U.S. practice. The claims are examined as best understood.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

Art Unit: 3634

Claims 1, 2, and 3 rejected under 35 U.S.C. 102(b) as being anticipated by Thumann #5,505,244. Thumann teaches a retractable screen disposed within a framing portion of the assembly. The screen accumulating on and paying out from a spring biased roll disposed within said frame portion.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-9, 13, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thumann in view of Jentof et al #4,757,852 and Welding Plastics, Design Engineering Page:27(3p), Jan 1, 1997. Thumann discloses a retractable screen disposed within a framing portion of the assembly. The screen accumulating on and paying out from a spring biased roll disposed within said frame portion. Thumann does not disclose a flexible T-shaped key. Jentof et al disclose a generally T-shaped key "e" for the purpose of providing an edge for the screen to be mounted and to provide a edge that is capable of being retained when the screen is pulled across the opening against the bias of the return spring. The T-shaped key "e" also has an inherent amount of flexibility. For this reason, it would have been obvious to one having

Art Unit: 3634

ordinary skill in the art, at the time of applicants' invention, to provide Thumann with a T-shaped key as taught by Jentof et al. Neither reference teaches that it is known to use RF welding to assemble the screen in the T-shaped key. It should be noted that the inclusion of the process of welding is giving little patentable weight. That is, it is considered a product by process limitation which has been well established as having little patentable weight (See M.P.E.P. 2113). However, a weld that is recited as a fastener is given appropriate patentable weight. Considering the Section 112 rejections above, it is not clear if applicant is setting forth the process of welding or the fastening structure of a weld. It is assumed for examination purposes that the claims are setting forth a fastening apparatus. Consequently, Welding Plastics teaches that it is known in the art to weld plastics by means of RF welding which one can control mechanical characteristics of the joining process such as fracture, fatigue and stress cracking. For this reason, it would have been obvious to one having ordinary skill in the art, at the time of applicants' invention, to provide the T-shaped key of Thumann with a plastic material that is welded using RF welding as taught by the Welding Plastics.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Johnston is cited for teaching Figure 3. Turner is cited for teaching Figure 4. Charlton is cited for teaching 14. Okamuro is cited for teaching the bar 40 clamping the screen.

Art Unit: 3634

Szako is cited for teaching the member 37. Evers is cited for teaching 26. Morgan is cited for teaching Figure 3, the T-shaped member inserted into the holder 32. Martin is cited for teaching the T-shaped screen holder. Laufer is cited for teaching the screen holder sliding connection. Risch et al are cited for teaching T-shaped member 70.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Cohen whose telephone number is (703) 308-2106.

The fax phone number for this Group is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.



C. Cohen

September 6, 2001